
Chapter 2 – EMPLOYEE BACKGROUND CHECK PROCESS

2.1.0 EMPLOYEES AS CAREGIVERS

A caregiver is a person who meets all of the following:

- is employed by or under contract with an entity;
- has regular, direct contact with the entity's clients or the personal property of the clients; and
- is under the entity's control.

This includes employees who provide direct care and may also include housekeeping, maintenance, dietary and administrative staff, if those persons are under the entity's control and have regular, direct contact with clients served by the entity.

Example: Patricia M. works as a nurse aide at a nursing home. She has regular, direct contact with the nursing home clients and access to their property while in their rooms. The nursing home must retain on file a completed caregiver background check for Patricia.

Example: Sam W., a bookkeeper at a CBRF, is responsible for the lockbox where personal money of the clients is kept. Because he has access to the clients' funds, Sam is subject to the background check process.

2.1.1 Contractors and Implied Contractors

The requirement for performing background checks includes contractors, agents of contractors and implied contractors. An agent of a contractor is an employee of the person who actually signed the contract. An implied contractor is someone who provides services on a regular basis, but a formal contract has not been established and compensation may be in a form other than monetary compensation, such as exchange of services.

2.1.2 Volunteers

Background checks are required for volunteers only if they are being used to replace a staff person or if they are used to document compliance with staff-to-patient or staff-to-client ratio requirements. Volunteers are not otherwise covered under the law.

Example: As a volunteer for her local hospice, Mary N. frequently provides direct care to clients in their homes where she acts as a staff person. Therefore, Mary is subject to the caregiver background check process.

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2.1.3 Students

Background checks are required for students who will be completing internships or clinical training at covered entities. All students must complete the Background Information Disclosure (BID) Form (HFS-64) that must be on file with the entity, unless the school maintains the records under an agreement with the entity (see 2.2.2).

The complete caregiver background check is not required if the student will be at the entity for less than 60 days, is under supervision, and the student's Background Information Disclosure form does not indicate a crime or offense that would make the student ineligible to be placed (see 2.2.3). Students under age 18 are also not subject to the full caregiver background check requirement if their completed Background Information Disclosure (BID) form does not indicate any offense that would make them ineligible.

Students are not eligible to be accepted by an entity if their BID indicates an offense on the Offenses Affecting Caregiver Eligibility list (see Appendix III), unless the student applied for and received approval through the Rehabilitation Review process (see Chapter 5). Entities may also refuse to accept students because of a conviction that the entity determines is substantially related to the duties of the job.

2.1.4 Temporary Employment Agency Services

Temporary employment agencies providing the services of caregivers to covered health care entities are subject to the background check requirements. Covered employees of temporary employment agencies include all employees who have regular, direct contact with clients. Entities may contract out the caregiver background check process to a temporary employment agency but the entity is ultimately responsible for the completion and accuracy of the background check process (see 2.2.2).

2.1.5 Individuals Not Defined as Caregivers

A caregiver is not:

- A person who performs solely clerical, administrative, maintenance or other support functions for an entity and who is not expected to have regular, direct contact with clients or the personal property of clients.
- A person who is employed or under contract with an entity to provide infrequent or occasional services, such as delivering items to the facility, equipment maintenance, groundskeeping, construction, or other similar services that are not directly related to the care of a client.

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2.2.0 BACKGROUND CHECK PROCESS

Effective October 1, 1998, entities must complete caregiver background checks on all new caregivers. Caregiver background checks for employees hired before October 1, 1998, were required to be completed by February 1, 2000.

After the initial background check at the time of employment or contracting, entities must conduct new caregiver background checks at least every four years, or at any time within that period an entity has reason to believe new checks should be obtained.

2.2.1 Forms Needed

To complete caregiver background checks on employees and contractors, an entity must use the following forms:

- The DHFS *Background Information Disclosure* (BID) Form HFS-64;
- The DOJ *Criminal History Record Request* Form DJ-LE-250 for single name requests or DJ-LE-250A to search multiple names.

(See Appendix I or

www.dhfs.state.wi.us/caregiver/BkgdFormsINDEX.HTM).

2.2.2 Contracting for Background Checks

Entities may contract out the caregiver background check process to another party (e.g., staffing agency, technical college, background check service) but the entity is ultimately responsible for the completion and accuracy of the background check process. If the entity contracts with another party to conduct and maintain the background checks, the entity must retain on file a written agreement allowing the party to retain the required background information.

Where there is a written letter of agreement with the entity, schools, temporary employment agencies or other agencies may conduct and maintain the caregiver background checks. Where such agreements exist, the school, employment agency or other agency must certify in writing to the entity that the student or caregiver employee has no offenses on the Offenses List (see Appendix III) and is therefore eligible for clinical placement or employment at the entity. The school or agency must also advise the entity of any convictions the person has so that the entity may consider whether any convictions are substantially related to the duties of the job.

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The contracted agency must provide the entity with a letter that includes:

- Each caregiver's name;
- Their social security number, if available;
- Any convictions;
- Any findings of misconduct;
- Any licensure denials or restrictions; or
- Other credential limitations.

2.2.3**Background Information Disclosure Form (HFS-64)**

At the time of hire, prospective caregivers (employees or contractors) must complete a HFS-64 Background Information Disclosure (BID) form prior to working as a caregiver (see Appendix 1). This is the first step in the caregiver background check process.

A “clean” BID is one with no convictions or findings by a governmental agency of client abuse, neglect or misappropriation or child neglect or abuse that require a Rehabilitation Review (see Appendix III) or license limitations that prevent a person from working in a position that requires a license. After reviewing the BID form, persons with a “clean” BID may be allowed to work for up to 60 days, under supervision, pending receipt of the DOJ criminal record search results, the DHFS letter or other necessary documentation.

Caregivers under the age of 18 are not subject to the full caregiver background check requirement if their completed BID form does not indicate any offense that would make them ineligible. When the caregiver turns 18, a complete caregiver background check must be obtained.

For other convictions disclosed on the BID, the employer may determine if the conviction is substantially related to the duties of the job (see 4.3.0). An employer may refuse to hire an applicant because of a conviction that is substantially related to the circumstances of a particular job, but the employer is not required to bar the person from employment.

2.2.3.1***Supervision Pending Complete Check***

Entities must provide supervision during the 60-day period pending receipt of a complete caregiver background check. At a minimum, this supervision must include periodic direct observation of the person. New employees should be supervised to at least the same extent as any other employee. The specific definition of supervision varies with each program type and each covered entity must follow its own requirements for supervision (e.g., HFS 83 Community-Based Residential Facilities, HFS 124 Hospitals, etc.).

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2.2.3.2 *Out-of-State Record Search*

The entity must make a good faith effort to obtain out-of-state conviction records from any state or other US jurisdiction (e.g, tribal courts, Puerto Rico, US Virgin Islands and Northern Mariana Islands, including Guam) for caregivers who resided outside of Wisconsin at any time during the three years preceding the date of the search (see Appendix II). If the caregiver resided in a closed record state, the entity may request the caregiver to provide the out-of-state record.

2.2.3.3 *Military Discharge Papers*

The entity must obtain a copy of the military discharge papers (DD-214) from a caregiver who was discharged from the military within the three years preceding the search. An entity must obtain additional information when a discharge is other than “honorable” (see 4.2.0 and 4.2.1.1).

Military discharge papers are provided to military personnel upon discharge and should be available from the employee/applicant. Veterans who do not have their DD-214 may obtain a copy of their discharge papers by submitting a Standard form 180, Request Pertaining to Military Records found via www.archives.gov. They may also contact their local County Veterans Service Officer (CVSO) for assistance in obtaining copies of their discharge papers.

2.2.3.4 *BID Form Retention*

The Background Information Disclosure form (HFS-64) remains with the entity, either on file at the entity, or in a place where it is readily available for inspection by authorized state personnel for a minimum of four (4) years or until the next background check is done. BID forms for employees or contractors should not be submitted to any state agency.

2.2.4 **Wisconsin Criminal History Record Request (DJ-LE-250/250A)**

The next step in the caregiver background check process is for the entity to verify the information on the BID form by submitting a Wisconsin Criminal History Record Request form (DJ-LE-250 or DJ-LE-250A) to the Department of Justice Crime Information Bureau (see Appendix I).

The entity must check the “*Caregiver – General*” box on the Criminal History Record Request form to obtain full information for a caregiver background check. Placing an “x” in the “*Caregiver – General*” request purpose box is the trigger that generates the electronic search of the DHFS and DRL databases, also known as the Integrated Background

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Information System (IBIS). The current fees for criminal history record searches by the Wisconsin Department of Justice are:

- Nonprofit organizations: \$2.00
- Governmental agencies: \$5.00
- All others: \$13.00

Plus \$2.50 for the DHFS and DRL database query.

Example: An AODA clinic is completing caregiver background checks on each of their 10 employees who meet the caregiver definition. As a nonprofit organization, they must pay:
 $\$2.00 + \$2.50 \text{ per person} = \$4.50 \times 10 = \$45.00$ for all 10 complete caregiver background checks.

Entities may incur other costs when additional research is required, such as following up with federal and local law enforcement agencies, county clerks of courts, tribal courts, or other states.

Entities must send the Criminal History Record Request form (DJ-LE-250 or 250A) to the Department of Justice, Crime Information Bureau with the required fees and a self-addressed stamped envelope.

2.2.4.1

DOJ Internet Checks

DOJ account holders may request criminal history record requests over the Internet at <http://wi-recordcheck.org>. The account number and a PIN are required to enter the site. A PIN can be obtained by contacting the Crime Information Bureau's Record Check Unit at (608) 266-5764. Searches conducted over the Internet will return the best possible match, if any, based on the information entered. Account customers are billed monthly. In the future, this service will be available to credit card customers as well. Email questions regarding the Internet based INTCH system to: INTCH@doj.state.wi.us

2.2.5

Response to Wisconsin Criminal History Record Request

After submitting the *Wisconsin Criminal History Record Request*, the entity will receive two responses:

1. A "no record found" response or a criminal record transcript (Wisconsin Identification Data) from the DOJ Crime Information Bureau; and
2. A letter from DHFS containing DHFS and DRL information about the person (Response to Caregiver Background Check, HFS-65).

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2.2.5.1 *Wisconsin Identification Data*

The Wisconsin Identification Data is a report of arrests or convictions within the state of Wisconsin from records maintained by the DOJ. Entities must examine this information for arrest and convictions and make employment decisions based on the results (see Chapter 4).

2.2.5.2 *Response to Caregiver Background Check, HFS-65*

If the correct “caregiver request purpose box” on the DOJ criminal history search form was checked, the letter from DHFS should follow the DOJ search results within one to two weeks. The DHFS search results in the letter from DHFS will contain nurse aide training and testing information and also any findings on the Caregiver Misconduct Registry.

The Response to Caregiver Background Check, also referred to as the IBIS letter, is a letter from DHFS that provides the following information:

- Nurse Aide Directory Training and Testing Status
- Caregiver Findings of Abuse or Neglect of a Client or Misappropriation of a Client’s Property
- Denials or Revocations of Operating Licenses for Adult Programs
- Denials or Revocations of Operating Licenses for Child Programs
- Rehabilitation Review Findings
- Status of Professional Credentials, Licenses or Certifications maintained by the Department of Regulation and Licensing

Entities must examine this information for findings of misconduct by a governmental agency and make employment decisions based on the results (see Chapter 4). Entities can ignore information on anyone other than the person for whom they requested a background check. Questions regarding any of the information on the IBIS letter should be directed to the appropriate phone number listed on the letter.

2.2.6 Incomplete/Incorrect Information2.2.6.1 *Department of Justice (DOJ) Response*

If an entity does not receive a response from DOJ, contact the Criminal Information Bureau at (608) 266-7780.

2.2.6.2 *Department of Health and Family Services (DHFS) Letter*

If an entity does not receive the letter from DHFS, the entity should check to see if it was sent to a different address in the organization, such as a

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corporate office or an account billing address. Inquiries about missing DHFS letters may be directed to the Caregiver Regulation and Investigation Section at (608) 243-2019.

The DHFS letter containing DRL & DHFS findings cannot be re-sent unless one of the “caregiver” request purpose boxes was checked on the original DOJ form.

If there is an error (incorrect name, DOB, SSN) in the Response to Caregiver Background Check letter the entity receives from DHFS, re-submit the original Wisconsin Criminal History Record Check (DJ-LE-250 or DJ-LE-250A) with a self-addressed stamped envelope to:

Crime Information Bureau (CIB)
Attn: Record Check Unit
P.O. Box 2688
Madison, WI 53701-2688

If the Crime Information Bureau made the error, there is no fee for re-processing the request. If the error was due to an incorrect or illegible form, the entity will be required to pay the processing fee again.

2.2.6.3

Department of Regulation and Licensing (DRL) Information

If the information under Status of Professional Credential(s), License(s) or Certificate(s) is incorrect or incomplete, an entity may query this information on the DRL Internet site at www.drl.state.wi.us by clicking on Business & Professional License Lookup. The information found there is consistent with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the National Committee for Quality Assurance (NCQA) standards for primary source verification. Entities may print out the information and file it with the background check information. For additional information related to licensing of health professionals, contact the Department of Regulation and Licensing at (608) 266-8794.

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2.2.7 Complete Caregiver Background Check

A **complete caregiver background check** consists of the following documents:

1. A completed HFS-64 *Background Information Disclosure* (BID) form;
2. A response from the Department of Justice (DOJ) *Wisconsin Criminal History Record Request*, either
 - A “no record found” response or
 - A criminal record transcript (Wisconsin Identification Data); and,
3. A “Response to Caregiver Background Check” letter from the Department of Health and Family Services (DHFS) that reports the person’s administrative finding or licensing restriction status.

Other documentation must be obtained by the entity when information is needed to complete the background check, such as other state’s conviction records, military discharge papers, arrest and conviction disposition information from local clerks of courts or tribal courts (See 2.2.3.2, 2.2.3.3 and Chapter 4).

2.2.8 Background Check Record Retention

Entities must maintain the background check documents for each caregiver. The entity may determine where and how these records are maintained, but the records must be readily available to BQA staff upon request. In general, caregiver background checks must be retained by the entity, to document compliance with the law. It is recommended that all documents necessary for a complete caregiver background check be filed together for each employee or contractor.

Entities are not required to have background checks on-site when they are retained at the entity’s central location, such as the corporate office. For temporary caregiver employees and for students completing clinicals at covered entities, the educational institution and temporary employment agency may retain the background check records when there is a written letter of agreement between the school or agency and the entity to do so (see 2.2.2).

In all cases where records are kept off-site, all conviction information regarding an eligible employee must be disclosed to the receiving entity so they can determine if any conviction may be substantially related to the duties of the job (see 4.3.0). Caregiver background check records must be readily available to BQA staff even if kept off-site.

Complete caregiver background checks for all current caregivers of an entity must remain on file and must be redone at least every four years.

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For persons who terminated employment or students who completed their educational program and clinicals, the records may be maintained in accordance with the records retention policy of the entity, school or temporary employment agency.

Example: Susan C. was hired at a home health agency in September 1999, at which time she completed a Background Information Disclosure (BID) form. The home health agency proceeded to obtain a complete caregiver background check. Susan resigned in January 2000 and was rehired by the same home health agency in April 2000. The home health agency properly had Susan complete a new BID form to verify no changes had occurred. The new BID is filed with the complete caregiver background check information obtained in September 1999, which is valid until September 2003.

2.3.0**SHARING CAREGIVER BACKGROUND CHECK RESULTS**

Criminal history records and caregiver background checks are public records. The results of the background checks may be shared with the applicant, employee or student.

In cases where the background checks have been conducted within the previous four years, entities are required to share the background checks with other entities on request.

2.4.0**INTERACTIVE VOICE RESPONSE (IVR)**

Employers must call the Interactive Voice Response (IVR) at the toll free number (877) 573-1081 to verify a nurse aide's employment eligibility to work in federally certified or state licensed facilities. Findings of abuse or neglect of a client or misappropriation of a client's property by a nurse aide are also included in the Interactive Voice Response (IVR) message given to callers. For other noncredentialed caregivers, employers may obtain misconduct findings by calling (608) 243-2019.

The Directory does not track criminal convictions, which may bar a caregiver from employment. Entities must complete caregiver background checks to obtain this information on all caregivers. After the initial background check at the time of employment or contracting, entities must conduct new caregiver background checks at least every four years, or at any time within that period an entity has reason to believe new checks should be obtained.

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2.5.0 STAFF SELF-REPORTING REQUIREMENTS

An entity must include in its personnel or operational policies a provision requiring employees, contractors or nonclient residents to notify the entity as soon as possible, but no later than the person's next working day when they have been convicted of any crime or have been or are being investigated by any governmental agency for any act or offense.

2.6.0 SANCTIONS

An entity may be subject to sanction if it fails to adhere to the provisions of the Caregiver Law. A person may be subject to sanction if they provide false information on a BID form as required under the Caregiver Law or if they fail to report new convictions, findings or license limitations.

2.6.1 Sanctionable Entity Actions

An entity may be subject to sanctions if they:

1. Hire, employ, or contract with a caregiver, or permit a nonclient resident to reside at the entity when the entity knew or should have known that the person is barred from doing so; or
2. Violate any provision of initial background information gathering or periodic background information gathering required under the law.

2.6.2 Entity Sanctions

If an entity commits any of the actions listed in 2.6.1, any or all of the following sanctions may be imposed:

- a. A forfeiture not to exceed \$1,000;
- b. A requirement that the entity submit a written corrective action plan specifying corrections the entity will make to the identified personnel screening practices needing correction and that the entity implement the plan;
- c. At entity expense, attendance at agency-designated personnel screening training or other appropriate training;
- d. Specific conditions or limitations placed on the license, certification or registration, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department; and/or
- e. A requirement that the entity use a temporary employment agency for screening and hiring personnel.

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2.6.3 Sanctionable Individual Actions

A person who is required to complete a Background Information Disclosure (BID) form may be subject to sanction if the person:

1. Fails to complete and submit the BID form to the appropriate agency or entity;
2. Knowingly gives false information or knowingly omits information on the BID form; or
3. After submitting a Background Information Disclosure form, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the BID.

2.6.4 Individual Sanctions

If an individual commits any of the actions listed in 2.6.3, any or all of the following sanctions may be imposed:

- a. A forfeiture not to exceed \$1,000;
- b. Denial or revocation of regulatory approval;
- c. Denial of eligibility to reside at the entity;
- d. Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.